



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.S.K. Associates

File: B-228367

Date: November 30, 1987

DIGEST

Protest of contracting officer's failure to notify protester of proposed awardee under a small business set-aside as required by regulation is denied since the Small Business Administration determined that the awardee is a small business concern for this procurement and therefore the protester was not prejudiced by the procedural deficiency.

DECISION

A.S.K. Associates protests the award of a contract to IMR Systems Corporation under request for proposals (RFP) No. DABT56-87-R-0035 issued by the Department of the Army for systems analysis and programming services.

We deny the protest.

The Army issued the RFP as a total small business set-aside, and IMR certified that it was a small business concern under the size standard applicable to this procurement. After evaluating the offers, the contracting officer made the award to IMR. He then notified A.S.K. of the award. Within 5 days after being notified of the award, the protester filed a timely written size protest with the contracting officer. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302 (1986). The contracting officer forwarded the protest to the Small Business Administration (SBA) which ultimately determined that IMR was small.

In the meantime, A.S.K. filed a protest with our Office, charging that the contracting officer failed to comply with FAR, 48 C.F.R. § 15.1001(b)(2), which requires that under a small business set-aside, "prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror." The notice need not be given if the contracting officer determines in writing "that the urgency of the requirement necessitates award without delay." Id.

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The Army concedes that the contracting officer did not comply with the pre-award notice requirement and that the omission was not due to the urgency of the requirement. The Army argues that the protester was not prejudiced, however, since SBA determined IMR to be small. A.S.K. claims that because the contracting officer failed to issue the required pre-award notice, the award was not valid and A.S.K. was forced to protest to our Office in order to prevent performance of work on the contract. See 31 U.S.C. § 3553(d) (Supp. III 1985). In this regard, A.S.K. points out that while FAR, 48 C.F.R. § 19.302(h)(1), prohibits the award of a contract after a timely size protest until SBA has made a size determination, or 10 days after SBA's receipt of the protest, whichever is earlier there is no provision requiring the contracting agency to suspend performance where a timely protest is filed after award.

We will not sustain protests involving alleged procedural deficiencies in connection with size status protests, like failing to give notification of the intended awardee, where SBA ultimately determines that the certifying firm is small for purposes of a particular procurement. See Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 C.P.D. ¶ 152; Service Engineering Co., B-225623, Apr. 28, 1987, 87-1 C.P.D. 442. Our rationale is that in such circumstances the protester suffers no competitive disadvantage or prejudice. See Technical Services Corp., 64 Comp. Gen. 245, supra. The fact that the protester may feel compelled to pursue the matter in more than one forum does not affect its competitive position and therefore is not a factor in determining prejudice. Since SBA has determined that IMR is a small business for this procurement, the same reasoning applies here.

The protest is denied.

for Seymour S. Hinchman
James F. Hinchman
General Counsel